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Trustee of WFT-TNG, a California Trust

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Attorneys for DEFENDANT,  
Martha Kongsgaard individually and as Trustee of the  
Martha Kongsgaard GST Exempt Trust U/T/A  
Dated October 21, 1993

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FRANCIS WANG, individually and as ) Case Number: 3:19-cv-00907 JSC  
Trustee of WFT-TNG, a California Trust )

Plaintiff(s), )

vs. )

MARTHA KONGSGAARD, individually and )  
as Trustee of The Martha Kongsgaard GST )  
Exempt Trust U/T/A dated October 21, 1993 )

Defendant(s). )

**JOINT STATUS REPORT &  
[PROPOSED] ORDER**

The parties to the above-entitled action jointly submit this JOINT STATUS  
REPORT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the  
Northern District of California and this Court's May 15, 2019 order staying the action.

JOINT STATUS REPORT & [PROPOSED] ORDER

1 PLAINTIFF'S POSITION

2  
3 1. Jurisdiction & Service

4 Complaint in the above-captioned case concerns real property located in Napa County,  
5 California. It was filed on February 19, 2019 based on diversity jurisdiction with an amount in  
6 controversy which exceeds \$75,000. No counterclaim has been filed and there are no known  
7 issues regarding personal jurisdiction or venue. All parties have been served. No answer has  
8 been filed because on May 15, 2019 this court granted defendant's motion for a stay of this  
9 case pending the state court proceedings. Attendant to the stay, this court ordered that an  
10 interim joint status report be filed every 180 days during the pendency of the related state court  
11 action filed in Napa County Superior Court (case no. 19 CV 000286).

12  
13 2. Facts

14 Plaintiff owns real property at 460 Stonecrest Drive, Napa, CA. Defendant owns  
15 adjacent property at 550 Stonecrest Drive, Napa, California. The properties share a common  
16 boundary to the north and east of the 460 Stonecrest property and the south and west of the 550  
17 Stonecrest property.

18 In the mid-1990's, Plaintiff constructed improvements on 550 Stonecrest Drive  
19 that stabilized the hillside, thereby protecting Plaintiff's home on 460 Stonecrest Drive from  
20 falling rocks, and that reduced the danger of fire and that have allowed Plaintiff to use the area of  
21 the improvements for recreational purposes. Plaintiff alleges that Plaintiff has easement rights  
22 over the area that Plaintiff improved. Plaintiff also alleges that Defendant has also encroached  
23 upon the road on Plaintiff's property at 460 Stonecrest by breaching a water pump agreement  
24 and encroaching on an electrical utility power line.

25 On or about May 28, 2010, Defendant wrote to Plaintiff inviting an offer to  
26 purchase a portion of the 550 Stonecrest property, including the portion of the property occupied  
27

1 by Plaintiff's improvements. Terms of purchase were negotiated between the parties and a final  
 2 contract was agreed upon. On July 8, 2010 Plaintiff prepared the agreement for the purchase of a  
 3 12-acre portion of the 550 Stonecrest property for \$400,000 with tender of \$7,500.00 earnest  
 4 money. John Kongsgaard, on behalf of himself, Defendant, and Mary Kongsgaard, signed the  
 5 purchase agreement on September 8, 2010. Subsequently, Defendant repudiated the executed  
 6 purchase agreement.

7 Principal facts in dispute include: the validity of the contract for the purchase of  
 8 12 acres of 550 Stonecrest, Plaintiff's easement rights or whether Plaintiff is liable for trespass  
 9 or nuisance on Defendant's property, whether Defendant interfered with Plaintiff's easement  
 10 rights, whether Defendant's agents trespassed on Plaintiff's property interfering with the water  
 11 pump and strip plantings and cutting down trees; and whether Defendant willfully concealed  
 12 and intentionally omitted disclosure of material facts to induce Plaintiff to rely on the executed  
 13 purchase agreement to his detriment.

14 3. Legal Issues

- 15 • The existence and enforceability of the purchase agreement signed by Defendant  
 16 on September 8, 2010.
- 17 • The existence and enforceability of Plaintiff's easement rights in the area of  
 18 Defendant's property occupied by Plaintiff's improvements.
- 19 • Did Defendant's actions interfering with the water pump constitute trespass?
- 20 • Whether those individuals who stripped plantings and cut down trees on  
 21 Plaintiff's property were agents of Defendant.
- 22 • Do the misrepresentations and omissions in the negotiation and sale of 12 acres  
 23 of property to Plaintiff constitute fraud?

24 4. Motions

25 No motions are pending.

1           5.    Amendment of Pleadings

2                   Until the stay is lifted and a verified answer is filed, defenses or counterclaims  
3 are unknown. No amendment of the complaint is contemplated presently.

4           6.    Evidence Preservation

5                   The Guidelines Relating to the Discovery of Electronically Stored Information  
6 have been reviewed. Because of the court's stay the parties have not met and conferred  
7 regarding preservation of evidence. However, discovery is ongoing in state court, and there is  
8 no known issue of destruction of evidence.  
9

10          7.    Disclosures

11                   Due to the pending stay compliance with the initial disclosure requirements of  
12 Fed. R. Civ. P. 26 and a description thereof has not been required.  
13

14          8.    Discovery

15                   No discovery in federal court has occurred. State court discovery in Napa  
16 Superior Court case no. 19CV000286 is ongoing. Each party has served the other with a 1<sup>st</sup> set  
17 of requests for admissions, form interrogatories, special interrogatories, and demands for  
18 inspection of documents, and each party has responded to those discovery requests.  
19

20          9.    Class Actions

21                   Not applicable.

22          10.   Related Cases

23                   There are no related cases filed in federal court. The Napa County Superior  
24 Court case no: 19CV000286 is a related case pending before another court.  
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11. Relief

Because of the pending stay, relief as described in the complaint is not presently sought in this action and damages which are the subject of ongoing discovery in state court have not been ascertained. Plaintiff reserves the right to amend this response after the stay is rescinded and/or discovery is undertaken and completed.

12. Settlement and ADR

Since the case is stayed, no provisions for settlement, ADR efforts, or a specific ADR plan for the case, including a proposed deadline have been discussed or selected.

13. Consent to Magistrate Judge For All Purposes

Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.               NO

14. Other References

Presently, the case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

Not applicable.

16. Expedited Trial Procedure

Not applicable.

17. Scheduling

Not Applicable.

18. Trial

There is no trial date in this court or in state court. However, a jury trial is requested for an approximate two-week trial.

19. Disclosure of Non-party Interested Entities or Persons

A Certification of Interested Entities or Persons has not been filed as required by Civil Local Rule 3-15 because on behalf of Plaintiff there is no persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding..

20. Professional Conduct

The attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

DEFENDANT'S POSITION:

Defendant submits this status report in compliance with this Court's May 15, 2019, Order staying this action and requesting a joint status report every 180 days. Defendant disagrees with Plaintiff's assessment that this case is set for a case management conference as the Court stayed the matter and simply requested a joint status report until the state proceedings concluded.

The parties are currently litigating the instant dispute in Napa County Superior Court, in *Kongsgaard v. Wang, et al.* Case No. 19CV000286. The parties have served each other with a 1<sup>st</sup> set of requests for admissions, form interrogatories, special interrogatories, and demands for inspection of documents, and each party has responded to those discovery requests

1 Defendant anticipates that the Napa County Superior Court Case will be set for trial in  
2 the Spring or the Summer of 2020 and that the matter will conclude in state court.  
3  
4  
5  
6

7 Dated: November 13, 2019

/s/ Gregory J. Ryken  
GREGORY J. RYKEN, ESQ.  
Counsel for Plaintiff

9  
10 Dated: November 13, 2019

/s/Timothy M. Flaherty  
TIMOTHY M. FLAHERTY, ESQ.  
Counsel for Defendant

PROPOSED ORDER

The above JOINT STATUS REPORT & PROPOSED ORDER is approved for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

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HONORABLE CHIEF MAGISTRATE JUDGE

JOSEPH C. SPERO

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JOINT STATUS REPORT & [PROPOSED] ORDER